

(1) The property cost center rate for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation, subject to RCW 74.46.310 through 74.46.380, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, as provided in RCW 74.46.180, by the greater of a facility's total ((patient)) resident days for the facility in the prior period or resident days as calculated on ninety or eighty-five percent facility occupancy as applicable. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total ((patient)) resident days used in computing the property cost center rate shall be adjusted to anticipated ((patient)) resident day level.

(2) A nursing facility's property rate shall be rebased annually, effective July 1, in accordance with this section and this chapter ~~((regardless of whether the rate is for the first or second year of the biennium))~~.

(3) When a certificate of need for a new facility is requested, the department, in reaching its decision, shall take into consideration per-bed land and building construction costs for the facility which shall not exceed a maximum to be established by the secretary.

Sec. 109. RCW 74.46.530 and 1993 sp.s. c 13 s 17 are each amended to read as follows:

(1) The department shall establish for each medicaid nursing facility a return on investment (ROI) rate composed of two parts: A financing allowance and a variable return allowance. The financing allowance part of a facility's return on investment component rate shall be rebased annually, effective July 1, in accordance with the provisions of this section and this chapter ~~((, regardless of whether the rate is for the first or second year of the biennium))~~.

(a) The financing allowance shall be determined by multiplying the net invested funds of each facility by .10, and dividing by the ~~((contractor's))~~ greater of a nursing facility's total ((patient)) resident days from the most recent cost report period or resident days calculated on ninety percent or eighty-five percent facility occupancy as applicable. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total ((patient)) resident days used in

1 computing the financing and variable return allowances shall be
2 adjusted to the anticipated ((patient)) resident day level.

3 (b) In computing the portion of net invested funds representing the
4 net book value of tangible fixed assets, the same assets, depreciation
5 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,
6 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,
7 shall be utilized, except that the capitalized cost of land upon which
8 the facility is located and such other contiguous land which is
9 reasonable and necessary for use in the regular course of providing
10 ((patient)) resident care shall also be included. Subject to
11 provisions and limitations contained in this chapter, for land
12 purchased by owners or lessors before July 18, 1984, capitalized cost
13 of land shall be the buyer's capitalized cost. For all partial or
14 whole rate periods after July 17, 1984, if the land is purchased after
15 July 17, 1984, capitalized cost shall be that of the owner of record on
16 July 17, 1984, or buyer's capitalized cost, whichever is lower. In the
17 case of leased facilities where the net invested funds are unknown or
18 the contractor is unable to provide necessary information to determine
19 net invested funds, the secretary shall have the authority to determine
20 an amount for net invested funds based on an appraisal conducted
21 according to RCW 74.46.360(1).

22 (c) In determining the variable return allowance:

23 (i) ~~((Every two years at the start of each new biennium))~~ For July
24 1, 1995, rate setting only, the department, without utilizing peer
25 groups, ~~((will))~~ shall first rank all facilities in numerical order
26 from highest to lowest according to their per ((patient)) resident day
27 adjusted or audited, or both, allowable costs for nursing services,
28 food, administrative, and operational costs combined for the
29 ~~((previous))~~ 1994 calendar year cost report period.

30 (ii) The department shall then compute the variable return
31 allowance by multiplying the appropriate percentage amounts, which
32 shall not be less than one percent and not greater than four percent,
33 by the sum of the facility's nursing services, food, administrative,
34 and operational rate components. The percentage amounts will be based
35 on groupings of facilities according to the rankings prescribed in (i)
36 of this subsection (1)(c). The percentages calculated and assigned
37 will remain the same for the ~~((next))~~ variable return allowance paid in
38 ~~((the second year of the biennium))~~ all July 1, 1996, and July 1, 1997,
39 rates as well. Those groups of facilities with lower per diem costs

1 shall receive higher percentage amounts than those with higher per diem
2 costs.

(d) The sum of the financing allowance and the variable return
4 allowance shall be the return on investment rate for each facility, and
5 shall be added to the prospective rates of each contractor as
6 determined in RCW 74.46.450 through 74.46.510.

(e) In the case of a facility which was leased by the contractor as
8 of January 1, 1980, in an arm's-length agreement, which continues to be
9 leased under the same lease agreement, and for which the annualized
10 lease payment, plus any interest and depreciation expenses associated
11 with contractor-owned assets, for the period covered by the prospective
12 rates, divided by the contractor's total ((~~patient~~)) resident days,
13 minus the property cost center determined according to RCW 74.46.510,
14 is more than the return on investment rate determined according to
15 subsection (1)(d) of this section, the following shall apply:

(i) The financing allowance shall be recomputed substituting the
17 fair market value of the assets as of January 1, 1982, as determined by
18 the department of general administration through an appraisal
19 procedure, less accumulated depreciation on the lessor's assets since
20 January 1, 1982, for the net book value of the assets in determining
21 net invested funds for the facility. A determination by the department
22 of general administration of fair market value shall be final unless
23 the procedure used to make such determination is shown to be arbitrary
24 and capricious.

(ii) The sum of the financing allowance computed under subsection
26 (1)(e)(i) of this section and the variable allowance shall be compared
27 to the annualized lease payment, plus any interest and depreciation
28 associated with contractor-owned assets, for the period covered by the
29 prospective rates, divided by the contractor's total ((~~patient~~))
30 resident days, minus the property cost center rate determined according
31 to RCW 74.46.510. The lesser of the two amounts shall be called the
32 alternate return on investment rate.

(iii) The return on investment rate determined according to
34 subsection (1)(d) of this section or the alternate return on investment
35 rate, whichever is greater, shall be the return on investment rate for
36 the facility and shall be added to the prospective rates of the
37 contractor as determined in RCW 74.46.450 through 74.46.510.

(f) In the case of a facility which was leased by the contractor as
39 of January 1, 1980, in an arm's-length agreement, if the lease is

1 renewed or extended pursuant to a provision of the lease, the treatment
2 provided in subsection (1)(e) of this section shall be applied except
3 that in the case of renewals or extensions made subsequent to April 1,
4 1985, reimbursement for the annualized lease payment shall be no
5 greater than the reimbursement for the annualized lease payment for the
6 last year prior to the renewal or extension of the lease.

7 (2) Each biennium, beginning in 1985, the secretary shall review
8 the adequacy of return on investment rates in relation to anticipated
9 requirements for maintaining, reducing, or expanding nursing care
10 capacity. The secretary shall report the results of such review to the
11 legislature and make recommendations for adjustments in the return on
12 investment rates utilized in this section, if appropriate.

13 Sec. 110. RCW 74.46.560 and 1983 1st ex.s. c 67 s 30 are each
14 amended to read as follows:

15 The department will notify each contractor in writing of its
16 prospective (~~reimbursement~~) payment rates by the effective dates of
17 the rates. Unless otherwise specified at the time it is issued,
18 (~~the~~) a rate will be effective from the first day of the month in
19 which it is issued until a new rate becomes effective. If a rate is
20 changed as the result of an appeals or exception procedure established
21 in accordance with RCW 74.46.780, it will be effective as of the date
22 the appealed rate became effective.

23 Sec. 111. RCW 74.46.570 and 1983 1st ex.s. c 67 s 31 are each
24 amended to read as follows:

25 (1) Prospective rates are subject to adjustment by the department
26 as a result of errors or omissions by the department or by the
27 contractor. The department will notify the contractor in writing of
28 each adjustment and of the effective date of the adjustment, and of any
29 amount due to the department or to the contractor as a result of the
30 rate adjustment.

31 (2) If a contractor claims an error or omission based upon
32 incorrect cost reporting, amended cost report pages shall be prepared
33 and submitted by the contractor. Amended pages shall be accompanied by
34 a certification signed by the licensed administrator of the nursing
35 facility and a written justification explaining why the amendment is
36 necessary. The certification and justification shall meet such
37 criteria as are adopted by the department. Such amendments may be used

1 to revise a prospective rate but shall not be used to revise a
2 settlement if submitted after commencement of the field audit. All
3 changes determined to be material by the department shall be subject to
4 field audit. If changes are found to be incorrect or otherwise
5 unacceptable, any rate adjustment based thereon shall be null and void
6 and resulting payments or payment increases shall be subject to refund.

7 (3) The contractor shall pay an amount owed the department
8 resulting from an error or omission as determined by the department on
9 or after July 1, 1995, or commence repayment in accordance with a
10 schedule determined and agreed to in writing by the department, within
11 sixty days after receipt of notification of the rate adjustment (~~(7~~
12 ~~unless the contractor contests the department's determination in~~
13 ~~accordance with the procedures set forth in RCW 74.46.780. If the~~
14 ~~determination is contested, the contractor shall pay or commence~~
15 ~~repayment within sixty days after completion of these proceedings)).~~
16 If a refund as determined by the department is not paid when due, the
17 amount thereof may be deducted from current payments by the department.
18 However, neither a timely filed request to pursue the department's
19 administrative appeals or exception procedure nor commencement of
20 judicial review, as may be available to the contractor in law, shall
21 delay recovery.

22 (4) The department shall pay any amount owed the contractor as a
23 result of a rate adjustment within thirty days after the contractor is
24 notified of the rate adjustment.

25 (5) No adjustments will be made to a rate more than one hundred
26 twenty days after the final audit narrative and summary for the period
27 the rate was effective is sent to the contractor or, if no audit is
28 held, more than one hundred twenty days after the preliminary
29 settlement becomes the final settlement, except when a settlement is
30 reopened as provided in RCW 74.46.170(3).

31 Sec. 112. RCW 74.46.640 and 1983 1st ex.s. c 67 s 34 are each
32 amended to read as follows:

33 (1) Payments to a contractor may be withheld by the department in
34 each of the following circumstances:

(a) A required report is not properly completed and filed by the
36 contractor within the appropriate time period, including any approved
37 extension. Payments will be released as soon as a properly completed
38 report is received;

1 (b) State auditors, department auditors, or authorized personnel in
2 the course of their duties are refused access to a nursing ((home))
3 facility or are not provided with existing appropriate records.
4 Payments will be released as soon as such access or records are
5 provided;

6 (c) A refund in connection with a preliminary or final settlement
7 or rate adjustment is not paid by the contractor when due. The amount
8 withheld will be limited to the unpaid amount of the refund and any
9 accumulated interest owed to the department as authorized by this
10 chapter; ((and))

11 (d) Payment for the final ((thirty)) sixty days of service under a
12 contract will be held in the absence of adequate alternate security
13 acceptable to the department pending final settlement when the contract
14 is terminated; and

15 (e) Payment for services at any time during the contract period in
16 the absence of adequate alternate security acceptable to the
17 department, if a contractor's net medicaid overpayment liability for
18 one or more nursing facilities or other debt to the department, as
19 determined by preliminary settlement, final settlement, civil fines
20 imposed by the department, third-party liabilities or other source,
21 reaches or exceeds fifty thousand dollars, whether subject to good
22 faith dispute or not, and for each subsequent increase in liability
23 reaching or exceeding twenty-five thousand dollars. Payments will be
24 released as soon as practicable after acceptable security is provided
25 or refund to the department is made.

26 (2) No payment will be withheld until written notification of the
27 suspension is provided to the contractor, stating the reason
28 ((therefor)) for the withholding, except that neither a request to
29 pursue the administrative appeals or exception procedure established by
30 the department in rule nor commencement of judicial review, as may be
31 available to the contractor in law, shall delay suspension of payment.

32 Sec. 113. RCW 74.46.690 and 1985 c 361 s 3 are each amended to
33 read as follows:

34 (1) When a facility contract is terminated for any reason, the old
35 contractor shall submit final reports as required by RCW 74.46.040.

36 (2) Upon notification of a contract termination, the department
37 shall determine by preliminary or final settlement calculations the
38 amount of any overpayments made to the contractor, including

1 overpayments disputed by the contractor. If preliminary or final
 2 settlements are unavailable for any period up to the date of contract
 termination, the department shall make a reasonable estimate of any
 4 overpayment or underpayments for such periods. The reasonable estimate
 5 shall be based upon prior period settlements, available audit findings,
 6 the projected impact of prospective rates, and other information
 7 available to the department. The department shall also determine and
 8 add in the total of all other debts owed to the department regardless
 9 of source, including, but not limited to, interest owed to the
 10 department as authorized by this chapter, civil fines imposed by the
 11 department, or third-party liabilities.

12 (3) The old contractor shall provide security, in a form deemed
 13 adequate by the department, ~~((in))~~ equal to the total amount of
 14 determined and estimated overpayments and all other debts from any
 15 source, whether or not the overpayments are the subject of good faith
 16 dispute. Security shall consist of:

17 (a) Withheld payments due the contractor; or

18 (b) A surety bond issued by a bonding company acceptable to the
 19 department; or

(c) An assignment of funds to the department; or

21 (d) Collateral acceptable to the department; or

22 (e) A purchaser's assumption of liability for the prior
 23 contractor's overpayment; ~~((or))~~

24 (f) A promissory note secured by a deed of trust; or

25 (g) Any combination of (a), (b), (c), (d), ~~((or))~~ (e), or (f) of
 26 this subsection.

27 (4) A surety bond or assignment of funds shall:

28 (a) Be at least equal in amount to determined or estimated
 29 overpayments, whether or not the subject of good faith dispute, minus
 30 withheld payments;

31 (b) Be issued or accepted by a bonding company or financial
 32 institution licensed to transact business in Washington state;

33 (c) Be for a term, as determined by the department, sufficient to
 34 ensure effectiveness after final settlement and the exhaustion of any
 35 administrative appeals or exception procedure and judicial remedies, as
 36 may be available to and sought by the contractor, regarding payment,
settlement, civil fine, interest assessment, or other debt issues:

38 PROVIDED, That the bond or assignment shall initially be for a term of
 39 at least five years, and shall be forfeited if not renewed thereafter

1 in an amount equal to any remaining combined overpayment (~~((in dispute))~~)
2 and debt liability as determined by the department;

3 (d) Provide that the full amount of the bond or assignment, or
4 both, shall be paid to the department if a properly completed final
5 cost report is not filed in accordance with this chapter, or if
6 financial records supporting this report are not preserved and made
7 available to the auditor; and

8 (e) Provide that an amount equal to any recovery the department
9 determines is due from the contractor (~~((at))~~) from settlement or from
10 any other source of debt to the department, but not exceeding the
11 amount of the bond and assignment, shall be paid to the department if
12 the contractor does not pay the refund and debt within sixty days
13 following receipt of written demand (~~((or the conclusion of~~
14 ~~administrative or judicial proceedings to contest settlement issues))~~)
15 for payment from the department to the contractor.

16 (5) The department shall release any payment withheld as security
17 if alternate security is provided under subsection (3) of this section
18 in an amount equivalent to determined and estimated overpayments.

19 (6) If the total of withheld payments, bonds, and assignments is
20 less than the total of determined and estimated overpayments, the
21 unsecured amount of such overpayments shall be a debt due the state and
22 shall become a lien against the real and personal property of the
23 contractor from the time of filing by the department with the county
24 auditor of the county where the contractor resides or owns property,
25 and the lien claim has preference over the claims of all unsecured
26 creditors.

27 (7) The contractor shall file a properly completed final cost
28 report in accordance with the requirements of this chapter, which shall
29 be audited by the department. A final settlement shall be determined
30 within ninety days following completion of the audit process, including
31 completion of any administrative appeals or exception procedure review
32 of the audit requested by the contractor, but not including completion
33 of any judicial review available to and commenced by the contractor.

34 (8) Following determination of settlement for all periods, security
35 held pursuant to this section shall be released to the contractor after
36 all overpayments, erroneous payments, and debts determined in
connection with final settlement, or otherwise, including accumulated
38 interest owed the department, have been paid by the contractor. (~~((If~~
39 ~~the contractor contests the settlement determination in accordance with~~

~~RCW 74.46.170, the department shall hold the security, not to exceed the amount of estimated unrecovered overpayments being contested, pending completion of the administrative appeal process.))~~

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

~~((If a contract is terminated solely in order for the same owner to contract with the department to deliver services to another classification of medical care recipients at the same facility, the contractor is not required to submit final cost reports, and security shall not be required))~~ Regardless of whether a contractor intends to terminate its medicaid contracts, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by preliminary settlement, final settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department. This subsection shall apply to all overpayments and erroneous payments determined by preliminary or final settlements issued on or after July 1, 1995, regardless of what payment periods the settlements may cover and shall apply to all debts owed the department from any source, including interest debts, which become due on or after July 1, 1995.

Sec. 114. RCW 74.46.770 and 1983 1st ex.s. c 67 s 39 are each amended to read as follows:

(1) For all nursing facility medicaid payment rates effective on or after July 1, 1995, and for all settlements and audits issued on or after July 1, 1995, regardless of what periods the settlements or audits may cover, if a contractor wishes to contest the way in which a rule ((or contract provision)) relating to the ((prospective cost-related reimbursement)) medicaid payment rate system was applied to the contractor by the department, it shall ((first)) pursue the ((administrative review process set forth in)) appeals or exception procedure established by the department in rule authorized by RCW 74.46.780.

(2) ~~((The administrative review and fair hearing process in RCW 74.46.780 need not be exhausted if a contractor wishes to challenge the legal validity of a statute, rule, or contract provision.))~~ If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision or wishes to bring a challenge based in whole or in part on federal law, including but not limited to issues of procedural or substantive compliance with the federal medicaid minimum payment standard for long-term care facility services, the appeals or exception procedure established by the department in rule may not be used for these purposes. This prohibition shall apply regardless of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the medicaid payment rate system, or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law.

Sec. 115. RCW 74.46.780 and 1989 c 175 s 159 are each amended to read as follows:

~~((1) Within twenty eight days after a contractor is notified of an action or determination it wishes to challenge, the contractor shall request in writing that the secretary review such determination. The request shall be signed by the contractor or the licensed administrator of the facility, shall identify the challenged determination and the date thereof, and shall state as specifically as practicable the grounds for its contention that the determination was erroneous.~~